



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 18, 2020

Ms. Alicia K. Kreh  
Counsel for the City of Richland Hills  
Taylor, Olson, Adkins, Sralla & Elam, L. L. P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2020-05052

Dear Ms. Kreh:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 812146.

The Richland Hills Police Department (the "department"), which you represent, received two requests from the same requestor for certain information pertaining to the arrest of the requestor's client. You state the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the requestor did not properly request some of the submitted information pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684.

Initially, we agree the information you indicated is not responsive to the requests because it does not pertain to the incident specified in the requests. This ruling does not address the public availability of any information that is not responsive to the requests, and the department is not required to release such information in response to the requests.

Next, as you acknowledge, the remaining responsive information includes peace officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) of the Occupations Code provides the following:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). You claim, and we agree, the requestor did not properly request the body worn camera recordings at issue in his first request for information. However, we note the requestor provided the requisite information under section 1701.661(a) of the Occupations Code for the body worn camera recordings at issue in his second request for information. Accordingly, since the requestor properly requested the body worn camera recordings at issue, we will consider your arguments against disclosure of this information.

Next, as you acknowledge, some of the remaining information is subject to article 2.1396 of the Code of Criminal Procedure. Article 2.1396 provides as follows:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test;  
or

(4) a procedure in which a specimen of the person's breath or blood is taken.

Crim. Proc. Code art. 2.1396. The information at issue consists of video recordings made by or at the direction of officers employed by the department that contain footage of the requestor's client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place); *see also id.* § 49.09(b) (driving while intoxicated offense under section 49.04 may be enhanced to third degree felony). Therefore, the requestor is entitled to receive copies of these portions of the video recordings pursuant to article 2.1396. Although you assert section 552.108 to withhold the information at issue, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's right of statutory access under article 2.1396 prevails. Therefore, the department may not withhold any portion of the video recordings at issue that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken under section 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *See* Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the

department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, the department must release any portion of the submitted video recordings that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the blood or breath of the requestor's client is taken pursuant to article 2.1396 of the Code of Criminal Procedure. With the exception of basic information, which must be released, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jxd

Ref: ID# 812146

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.